

EXPOSURE DRAFT

ED 15/09

(April 2009)

**Proposed Auditing Standard
ASA 508
Litigation and Claims
(Revised and Redrafted)
(Re-issuance of ASA 508)**

Issued for Comment by the **Auditing and Assurance Standards Board**



Australian Government

Auditing and Assurance Standards Board

Commenting on this Exposure Draft

Comments on this Exposure Draft should be forwarded so as to arrive by no later than 18 May 2009. Comments should be addressed to:

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A copy of all non-confidential submissions will be placed on public record on the AUASB website: www.auasb.gov.au.

Obtaining a Copy of this Exposure Draft

This Exposure Draft is available on the AUASB website: www.auasb.gov.au.

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Litigation and Claims (Revised and Redrafted) (Re-issuance of ASA 508)

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PREFACE

Reasons for Issuing ED 15/09

The Auditing and Assurance Standards Board (AUASB) is proposing to re-issue Auditing Standard ASA 508 *Enquiry Regarding Litigation and Claims* (April 2006) pursuant to the requirements of the legislative provisions and the Strategic Direction explained below.

The AUASB is an independent statutory board of the Australian Government established under section 227A of the *Australian Securities and Investments Commission Act 2001*, as amended (ASIC Act). Under section 336 of the *Corporations Act 2001*, the AUASB may make Australian Auditing Standards for the purposes of the corporations legislation. These Auditing Standards are legislative instruments under the *Legislative Instruments Act 2003*.

The International Auditing and Assurance Standards Board (IAASB), an independent standard-setting board of the International Federation of Accountants (IFAC), has undertaken a programme to redraft, in “clarity” format, the entire suite of International Standards on Auditing (ISAs). In some cases, and in accordance with normal practice, the ISAs have been revised in addition to being redrafted. The redrafted ISAs are effective for audits of financial statements for periods beginning on or after 15 December 2009.

Under the Strategic Direction given to the AUASB by the Financial Reporting Council (FRC), the AUASB is required to have regard to any programme initiated by the IAASB for the revision and enhancement of the ISAs and to make appropriate consequential amendments to the Australian Auditing Standards. Accordingly, the AUASB has decided to revise and redraft the Australian Auditing Standards using the equivalent redrafted ISAs.

Given its importance in the Australian context, the AUASB proposes to continue to issue ASA 508 (Revised and Redrafted) *Litigation and Claims* as a separate Auditing Standard. The equivalent IAASB standard is ISA 501 *Audit Evidence—Specific Considerations for Selected Items*, which contains sections on Inventory, Litigation and Claims and Segment Information. Proposed ASA 508 (Revised and Redrafted) contains all the requirements and guidance contained in ISA 501 relating to Litigation and Claims, as well as additional requirements and guidance that were contained in extant ASA 508 *Enquiry Regarding Litigation and Claims*.

**Proposed Auditing Standard ASA 508
Litigation and Claims (Revised and Redrafted) (Re-issuance of ASA 508)**

Main Proposals

This proposed Auditing Standard establishes mandatory Requirements and provides Application and Other Explanatory Material regarding specific considerations by the auditor in obtaining sufficient appropriate audit evidence with respect to litigation and claims involving the entity in an audit of a financial report.

Proposed Operative Date

It is intended that this proposed Auditing Standard will be operative for financial reporting periods commencing on or after 1 January 2010.

Main Changes from existing ASA 508 *Enquiry Regarding Litigation and Claims* (April 2006)

The main differences between this proposed Auditing Standard ASA 508 (Revised and Redrafted) *Litigation and Claims* and the Auditing Standard that it supersedes, ASA 508 *Enquiry Regarding Litigation and Claims* (April 2006), are included in the Tables of Differences provided as an attachment to this Exposure Draft.

Request for Comments

Comments are invited on this Exposure Draft of the proposed re-issuance of Auditing Standard ASA 508 *Litigation and Claims* by no later than 18 May 2009. The AUASB is seeking comments on the main changes from the existing ASA 508. In addition, respondents are asked to consider and respond to the following questions:

1. Have applicable laws and regulations been appropriately addressed in the proposed standard?
2. Are there any references to relevant laws or regulations that have been omitted?
3. Are there any laws or regulations that may, or do, prevent or impede the application of the proposed standard, or may conflict with the proposed standard?
4. What, if any, are the additional significant costs to/benefits for auditors and the business community arising from compliance with the main changes to the Requirements of this proposed Auditing

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Standard? If there are significant costs, do these outweigh the benefits to the users of audit services?

5. Are there any other significant public interest matters that constituents wish to raise?

The AUASB prefers that respondents express a clear opinion on whether the main changes to the Requirements of this proposed Auditing Standard are supported and that this opinion be supplemented by detailed comments, whether supportive or critical, on the above matters. The AUASB regards both supportive and critical comments as essential to a balanced review of the Auditing Standard.

AUASB Information Note

The IAASB has announced completion of the “Clarity” project. While all currently known conforming amendments are incorporated into this Exposure Draft, readers are advised that the AUASB may decide to make further conforming amendments and other editorial changes.

Proposed Auditing Standard ASA 508
Litigation and Claims (Revised and Redrafted) (Re-issuance of ASA 508)

AUTHORITY STATEMENT

The Auditing and Assurance Standards Board (AUASB) makes this Auditing Standard ASA 508 *Litigation and Claims (Revised and Redrafted)* pursuant to section 227B of the *Australian Securities and Investments Commission Act 2001* and section 336 of the *Corporations Act 2001*.

This Auditing Standard is to be read in conjunction with ASA 101 *Preamble to Australian Auditing Standards*, which sets out the intentions of the AUASB on how the Australian Auditing Standards operative for financial reporting periods commencing on or after 1 January 2010 are to be understood, interpreted and applied.

AUDITING STANDARD ASA 508

Litigation and Claims (Revised and Redrafted)

Application

- Aus 0.1 This Auditing Standard applies to:
- (a) an audit of a financial report for a financial year, or an audit of a financial report for a half-year, in accordance with the *Corporations Act 2001* (the Act); and
 - (b) an audit of a financial report, or a complete set of financial statements, for any other purpose.
- Aus 0.2 This Auditing Standard also applies, as appropriate, to an audit of other historical financial information.

Operative Date

- Aus 0.3 This Auditing Standard is operative for financial reporting periods commencing on or after 1 January 2010.

Introduction

Scope of this ASA

1. This Auditing Standard deals with specific considerations by the auditor in obtaining sufficient appropriate audit evidence in accordance with ASA 330 (Revised and Redrafted),¹ ASA 500 (Revised and Redrafted)² and other relevant Australian Auditing Standards, with respect to litigation and claims involving the entity in an audit of financial report.

Effective Date

2. [Deleted by the AUASB. Refer Aus 0.3]

¹ See ASA 330 (Revised and Redrafted) *The Auditor's Responses to Assessed Risks*.

² See ASA 500 (Revised and Redrafted) *Audit Evidence*.

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Objective

3. The objective of the auditor is to obtain sufficient appropriate audit evidence regarding the completeness of litigation and claims involving the entity.

Requirements

Completeness of Litigation and Claims

4. The auditor shall design and perform audit procedures in order to identify litigation and claims involving the entity which may give rise to a risk of material misstatement, including:
(Ref: Para. A1-A4)
- (a) Enquiry of management and, where applicable, others within the entity, including in-house legal counsel;
 - (b) Reviewing minutes of meetings of those charged with governance and correspondence between the entity and its external legal counsel; and
 - (c) Reviewing legal expense accounts. (Ref: Para. A4)

Communication with the Entity's Legal Counsel

External Legal Counsel

5. If the auditor assesses a risk of material misstatement regarding litigation or claims that have been identified, or when audit procedures performed indicate that other material litigation or claims may exist, the auditor shall endeavour to, in addition to the procedures required by other Australian Auditing Standards, seek direct communication with the entity's external legal counsel. The auditor shall do so through a letter of enquiry, prepared by management and sent by the auditor, requesting the entity's external legal counsel to communicate directly with the auditor. If law, regulation or the respective legal professional body prohibits the entity's external legal counsel from communicating directly with the auditor, the auditor shall perform alternative audit procedures.
(Ref: Para. A5-A8)
6. If:
- (a) management refuses to give the auditor permission to communicate or meet with the entity's external legal

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counsel, or the entity's external legal counsel refuses to respond appropriately to the letter of enquiry, or is prohibited from responding; and

- (b) the auditor is unable to obtain sufficient appropriate audit evidence by performing alternative audit procedures,

the auditor shall modify the opinion in the auditor's report in accordance with ASA 705 (Revised and Redrafted).

In-house Legal Counsel

- Aus 6.1 Where in-house legal counsel has the primary responsibility for litigation and claims and is in the best position to corroborate management's representations, the auditor shall endeavour to obtain a representation letter, seeking information similar to that sought from the entity's external legal counsel, from the in-house legal counsel.
(Ref. Para. Aus A8.1-Aus A8.2)

Legal Counsel's Response

- Aus 6.2 If a response from the entity's legal counsel contains a material disagreement with management's original evaluation of a particular matter, the auditor shall seek discussions with management and the entity's legal counsel, unless management subsequently agrees with the legal counsel's evaluation. (Ref. Para. Aus A8.3-Aus A8.10)

Written Representations

7. The auditor shall request management and, where appropriate, those charged with governance to provide written representations that all known actual or possible litigation and claims whose effects should be considered when preparing the financial report have been disclosed to the auditor and appropriately accounted for and disclosed in accordance with the applicable financial reporting framework. (Ref. Para. Aus A8.12)

Related Procedures

- Aus 7.1 The auditor shall enquire of management about new litigation and claims referred to the entity's legal counsel subsequent to the date of the request for a letter of enquiry to the entity's legal counsel and prior to signing the auditor's report. (Ref. Para. A9-Aus A9.1)

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***Litigation and Claims* (Revised and Redrafted) (Re-issuance of ASA 508)**

Aus 7.2 If audit procedures lead to the discovery of matters of a legal nature not previously identified by management, the auditor shall consider the impact of each of the matters on the financial report. (Ref. Para. Aus A9.2-Aus A9.3)

* * *

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Application and Other Explanatory Material

Completeness of Litigation and Claims (Ref: Para. 4)

A1. Litigation and claims involving the entity may have a material effect on the financial report and thus may be required to be disclosed or accounted for in the financial report.

Aus A1.1 It is the responsibility of those charged with governance of an entity to adopt policies and procedures to identify, evaluate, record and report on the outcome of any material litigation and claims. However, since the factors that would be considered in the accounting for and reporting of litigation and claims are within the direct knowledge and control of the management of an entity, management is the primary source of information. Ordinarily, the auditor would seek audit evidence from different sources to corroborate management's assertions.

A2. In addition to the procedures identified in paragraph 4, other relevant procedures include, for example, using information obtained through risk assessment procedures carried out as part of obtaining an understanding of the entity and its environment to assist the auditor to become aware of litigation and claims involving the entity.

Aus A2.1 To identify litigation and claims involving the entity, in addition to the procedures identified in paragraphs 4 and A2, the auditor ordinarily performs the following procedures:

- reviews and discusses with management the procedures within the entity's internal control structure for identifying and recording litigation and claims and bringing them to the attention of management;
- reviews and discusses with management the procedures within the entity's internal control structure for the identification, control and recording of litigation and claims and associated revenues and expenses in appropriate accounts; and
- obtains and discusses with management:
 - (i) a list of litigation and claims, including a description of the matters and an estimate

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of their likely financial consequences;
and

- (ii) an analysis identifying litigation and claims.

Aus A2.2 Audit procedures that are undertaken for different purposes might also disclose litigation and claims. Such procedures include:

- examining contracts, loan agreements, leases, insurance policies and claims, and other correspondence;
- reading minutes of meetings of the audit committee, shareholders and appropriate committees;
- obtaining information concerning guarantees from bank confirmations; and
- enquiries of management and other employees of the entity.

A3. Audit evidence obtained for purposes of identifying litigation and claims that may give rise to a risk of material misstatement also may provide audit evidence regarding other relevant considerations, such as valuation or measurement, regarding litigation and claims. ASA 540 (Revised and Redrafted)³ establishes requirements and provides guidance relevant to the auditor's consideration of litigation and claims requiring accounting estimates or related disclosures in the financial report.

Aus A3.1 The procedures outlined in paragraphs A1-A3 of this Auditing Standard are methods whereby the auditor can identify both material litigation and claims and legal counsel who have been consulted by the entity. However, these procedures may not necessarily provide the auditor with sufficient appropriate audit evidence concerning the likely outcome of litigation and claims, or indicate whether the information provided by management is complete. Furthermore, the auditor ordinarily does not possess the skills necessary and is not in a position to make legal

³ See ASA 540 (Revised and Redrafted) *Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures*.

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judgements concerning the likely outcome of litigation and claims.

Reviewing Legal Expense Accounts (Ref: Para. 4(c))

- A4. Depending on the circumstances, the auditor may judge it appropriate to examine related source documents, such as invoices for legal expenses, as part of the auditor's review of legal expense accounts.

Communication with the Entity's Legal Counsel (Ref: Para. 5-Aus 6.2)

External Legal Counsel (Ref: Para. 5-6)

- A5. Direct communication with the entity's external legal counsel assists the auditor in obtaining sufficient appropriate audit evidence as to whether potentially material litigation and claims are known and management's estimates of the financial implications, including costs, are reasonable.
- A6. In some cases, the auditor may seek direct communication with the entity's external legal counsel through a letter of general enquiry. For this purpose, a letter of general enquiry requests the entity's external legal counsel to inform the auditor of any litigation and claims that the counsel is aware of, together with an assessment of the outcome of the litigation and claims, and an estimate of the financial implications, including costs involved.
- A7. If it is considered unlikely that the entity's external legal counsel will respond appropriately to a letter of general enquiry, for example if the professional body to which the external legal counsel belongs prohibits response to such a letter, the auditor may seek direct communication through a letter of specific enquiry. For this purpose, a letter of specific enquiry includes:
- (a) A list of litigation and claims;
 - (b) Where available, management's assessment of the outcome of each of the identified litigation and claims and its estimate of the financial implications, including costs involved; and
 - (c) A request that the entity's external legal counsel confirm the reasonableness of management's assessments and provide the auditor with further information if the list is

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considered by the entity's external legal counsel to be incomplete or incorrect.

Aus A7.1 An example of a letter of specific enquiry is included in Aus Appendix 1.

Aus A7.2 An auditor may in some cases request that management send a request for a letter of enquiry to the entity's legal counsel who are not identified as currently handling the entity's litigation and claims. For example when the entity has changed legal counsel on a particular matter, or when legal counsel engaged by the entity has resigned, the auditor would consider the need for enquiries concerning the reasons for the change or resignation.

A8. In certain circumstances, the auditor also may judge it necessary to meet with the entity's external legal counsel to discuss the likely outcome of the litigation or claims. This may be the case, for example, where:

- The auditor determines that the matter is a significant risk.
- The matter is complex.
- There is disagreement between management and the entity's external legal counsel.

Ordinarily, such meetings require management's permission and are held with a representative of management in attendance.

In-house Legal Counsel (Ref: Para. Aus 6.1-Aus 6.2)

Aus A8.1 Before relying on the opinion of either in-house legal counsel or external legal counsel, care must be exercised to ensure that conditions prevail which would make such reliance reasonable⁴.

Aus A8.2 If both in-house and external legal counsel are involved in advising the entity on the same litigation and claims, the auditor would ordinarily seek a letter of enquiry from the legal counsel with the primary responsibility for that matter. However, there may be circumstances where the in-house legal counsel has primary responsibility, but the matter has

⁴ For the applicable Requirements and guidance on using the work of a management's expert, see ASA 500 (Revised and Redrafted).

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involved substantial participation by an external legal counsel, and is of such significance that the auditor would consider obtaining a letter of enquiry from the external legal counsel that their opinion does not differ materially from that of the in-house legal counsel.

- Aus A8.3 In circumstances where both in-house and external legal counsel have devoted substantial attention to litigation and claims involving the entity and primary responsibility rests with the external legal counsel, evidence obtained from an in-house legal counsel is not an adequate substitute for any information that the external legal counsel may refuse to furnish, in which case, the procedures outlined in paragraphs Aus 6.2 and Aus A8.3- Aus A8.11 would ordinarily be followed.

Legal Counsel's Response

- Aus A8.4 If the disagreement is resolved after discussions, the auditor would ordinarily request that the entity's legal counsel confirm in writing to the auditor the reasonableness of the details as resolved.
- Aus A8.5 If the disagreement is not resolved, the auditor would ordinarily prepare a memorandum of the discussion and seek written confirmation from management and the entity's legal counsel that it is an accurate record of the discussion. In conjunction with evidence from other audit procedures, the auditor, under ASA 705 (Revised and Redrafted) *Modifications to the Opinion in the Independent Auditor's Report*, needs to consider the effect of such disagreement on the auditor's report.
- Aus A8.6 If the response from the entity's legal counsel contains information that requires clarification, the auditor would ordinarily make further enquiries of management and the entity's legal counsel, as appropriate, and request clarification in writing.

Legal Counsel's Inability to Respond Comprehensively or Limitations in a Response

- Aus A8.7 If a response is not received from the entity's legal counsel, or the response received is incomplete, the auditor would ordinarily consider:

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- (a) requesting management to contact the entity's legal counsel to either seek a complete answer to the original request, or an explanation for the lack of, or limitation in, a response, which ought to be sent directly to the auditor; or
- (b) making arrangements to discuss with management or the entity's legal counsel the reasons for the lack of, or limitation in, a response.

Aus A8.8 Due to the following circumstances it may be difficult to either obtain a response to a letter of enquiry or be provided with information about litigation and claims from the entity's legal counsel:

- (a) If the entity is involved in litigation, or litigation is anticipated or contemplated, relevant information about legal matters may be subject to legal professional privilege. Disclosure of this information in the letter of enquiry, directly to the auditor for the purposes of the audit of the entity's financial report, is not privileged. This may cause legal professional privilege attaching to the entity's communications with its legal counsel to be compromised, as information in the letter of enquiry might become discoverable in litigation proceedings.
- (b) Factors influencing the outcome of a legal matter may sometimes not be within the legal counsel's competence to judge, for example where there is no relevant or historical experience of the entity or other entities in similar matters, or where the litigation is at an early stage.
- (c) Due to material uncertainties, the entity's legal counsel may be unable to form a conclusion to corroborate management's representations regarding outstanding litigation and claims.

Aus A8.9 Where the auditor has not obtained sufficient appropriate audit evidence as to a material financial report assertion regarding litigation and claims, under ASA 330 (Revised and Redrafted), the auditor needs to consider whether alternative audit procedures can provide further audit evidence. Alternative audit procedures may include:

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- (a) further enquiries of management or those charged with governance, about for instance the processes, procedures and assumptions they implement, adopt or make to ensure litigation and claims are recognised and disclosed in accordance with the applicable financial reporting framework;
- (b) where possible, making arrangements to discuss litigation and claims with management and the entity's legal counsel;
- (c) further review of documents in management's possession concerning litigation and claims, including the entity's board minutes; and
- (d) further examination of accounts rendered by the entity's external legal counsel.

Aus A8.10 The auditor may also consider any relevant legislation to assist in obtaining information about litigation and claims, including:

- Section 310 of the Act for example, entitles the auditor to a right of access at all reasonable times to the books of a company, registered scheme or disclosing entity, and to require from any officer information, explanations or other assistance for the purposes of the audit or review.
- When the entity is a disclosing entity, whether disclosure of any litigation and claims has been made in accordance with the continuous disclosure requirements under section 674 or 675 of the Act.

Aus A8.11 Under ASA 230 (Revised and Redrafted) *Audit Documentation*, the auditor needs to prepare sufficient appropriate audit documentation regarding the alternative audit procedures performed.

Audit Reporting Considerations

Aus A8.12 In those circumstances where, due to uncertainties, the entity's legal counsel is unable to form a conclusion to corroborate management's representation (see paragraph Aus A8.7(c) above), the auditor needs to consider the effect

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on the auditor's report arising from the extent of disclosure of the uncertainty in the financial report:

- (a) where the auditor considers that the disclosure of the uncertainty in the financial report is adequate, the auditor needs to consider including an emphasis of matter; in accordance with ASA 706 (Revised and Redrafted) *Emphasis of Matter Paragraphs and Other Paragraphs in the Independent Auditor's Report*, or
- (b) if in the auditor's opinion the disclosure of the uncertainty is inadequate or unreliable, a modified opinion needs to be expressed in accordance with ASA 705 (Revised and Redrafted) *Modifications to the Opinion in the Independent Auditor's Report*.

Written Representations (Ref. Para.7)

Aus A8.13 ASA 580 (Revised and Redrafted) *Written Representations* deals with the auditor's responsibility to obtain written representations from management and, where appropriate, those charged with governance in an audit of a financial report. Appendix 2 of that Standard provides an illustrative example of a representation letter.

Related Procedures (Ref. Para. Aus 7.1-Aus 7.2)

A9. In accordance with ASA 700 (Revised and Redrafted),⁵ the auditor is required to date the auditor's report no earlier than the date on which the auditor has obtained sufficient appropriate audit evidence on which to base the auditor's opinion on the financial report. Audit evidence about the status of litigation and claims up to the date of the auditor's report may be obtained by enquiry of management, including in-house legal counsel, responsible for dealing with the relevant matters. In some instances, the auditor may need to obtain updated information from the entity's external legal counsel.

Aus A9.1 Under paragraphs Aus 7.1 and Aus 7.2 of this Auditing Standard, when new litigation or claims, which may have a material effect on the financial report, have been referred to the entity's legal counsel subsequent to sending the letter of

⁵ See ASA 700 (Revised and Redrafted) *Forming an Opinion and Reporting on a Financial Report* paragraph 41.

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enquiry to the entity's legal counsel and prior to signing the auditor's report, the auditor needs to request management to prepare an additional letter of enquiry to the legal counsel regarding the new litigation and claims.

Aus A9.2 When litigation and claims matters, which may have a material effect on the financial report, are discovered, which were not previously identified by management, the auditor would ordinarily inform management and request management to address further enquiries to, or arrange a meeting with, the entity's legal counsel or other relevant experts, at which the auditor would be present. In addition, the auditor needs to extend the auditor's audit procedures to ensure that sufficient appropriate audit evidence on which to form an opinion has been obtained. If, however, having regard to all the circumstances, the auditor is unable to obtain satisfaction that all the information required for the purposes of the audit has been received, the audit opinion needs to be modified under ASA 705 (Revised and Redrafted).

Aus A9.3 If information comes to the auditor's attention that may indicate the existence of material liabilities resulting from litigation and claims on which management has not sought advice, the auditor ordinarily discusses the matter with those charged with governance. Depending on the circumstances, refusal by management to seek advice may be considered to be a limitation in the scope of the auditor's work.

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***Litigation and Claims* (Revised and Redrafted) (Re-issuance of ASA 508)**

Conformity with International Standards on Auditing

This Auditing Standard conforms with the Litigation and Claims sections (paragraphs 1-3, 9-12 and A17-A25) of International Standard on Auditing ISA 501 *Audit Evidence—Specific Considerations for Selected Items* (Redrafted), issued by the International Auditing and Assurance Standards Board (IAASB), an independent standard-setting board of the International Federation of Accountants (IFAC).

Given its importance in the Australian context, the AUASB has decided to issue ASA 508 (Revised and Redrafted) *Litigation and Claims* as a separate Auditing Standard. This Auditing Standard contains all the requirements and guidance contained in ISA 501 relating to Litigation and Claims, as well as additional requirements and guidance that were contained in extant ASA 508 *Enquiry Regarding Litigation and Claims*. Paragraphs that have been added to this Auditing Standard (and do not appear in the text of ISA 501 (Redrafted)) are identified with the prefix “Aus”.

Paragraphs in this Auditing Standard have been re-numbered, compared to the equivalent paragraphs in ISA 501 (Redrafted), as shown in the following table:

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| ISA 501 Description | ISA 501 Para. # | ASA 508 Para. # |
|---|----------------------------|----------------------------|
| Requirements | | |
| Litigation and Claims | 9 | 4 |
| | 10 | 5 |
| | 11 | 6 |
| | 12 | 7 |
| Application and Other Explanatory Material | | |
| Litigation and Claims | A17 | A1 |
| | A18 | A2 |
| | A19 | A3 |
| | A20 | A4 |
| | A21 | A5 |
| | A22 | A6 |
| | A23 | A7 |
| | A24 | A8 |
| | A25 | A9 |

Compliance with this Auditing Standard enables compliance with the Litigation and Claims sections of ISA 501.

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Aus Appendix 1

(Ref: Para. 5 and Para. A7)

This example letter relates to specific enquiry directed to the entity's external legal counsel, but may be adapted, as appropriate, to specific enquiry directed to the entity's internal legal counsel.

**EXAMPLE OF A LETTER OF SPECIFIC ENQUIRY
TO EXTERNAL LEGAL COUNSEL
(FOR AN AUDIT CLIENT)**

(Client Letterhead)

(Date)

(Name and Address of External Legal Counsel)

Dear ...

In connection with the preparation and audit of the financial report of (name of company) (and the following subsidiaries and/or divisions) for the reporting period ended (date) we request that you provide to this company, at our cost, the following information:

- 1 Confirmation that you are acting for the company (and the above-named subsidiaries and/or divisions) in relation to the matters mentioned below and that the directors' description and estimates of the amounts of the financial settlement (including costs and disbursements) which might arise in relation to those matters are in your opinion reasonable.

| Name of Company (subsidiary or division) | Directors' Description of Matter (including current status) | Directors' Estimate of the Financial Settlement (inclusive of costs and disbursements) |
|--|---|--|
|--|---|--|

- 2 Should you disagree with any of the information included in 1 above, please comment on the nature of your disagreement.
- 3 In addition to the above, a list of open files that you maintain in relation to the company (and the above mentioned subsidiaries and/or divisions).

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- 4 In relation to the matters identified under 2 and 3 above, we authorise you to discuss these matters with our auditor (name and address), if requested, and at our cost.

It is understood that:

- (a) the company (and the above-named subsidiaries and/or divisions) may have used other legal counsel in certain matters;
- (b) the information sought relates only to information relating to litigation and claims referred to your firm (including branches or subsidiaries) which were current at any time during the above-mentioned reporting period, or have arisen since the end of the reporting period and up to the date of your response;
- (c) unless separately requested in writing, you are not responsible for keeping the auditors advised of any changes after the date of your reply;
- (d) you are only required to respond on matters referred to you as legal counsel for the company (and the above-mentioned subsidiaries and/or divisions), not on those within your knowledge solely because of the holding of any office as director, secretary or otherwise of the company (and the above-mentioned subsidiaries and/or divisions) by a consultant, partner or employee of your firm; and
- (e) your reply is sought solely for the information of, and assistance to, this company in connection with the audit of, and report with respect to, the financial report of the company (and the above-mentioned subsidiaries and/or divisions) and will not be quoted or otherwise referred to in any financial report or related documents of the company (and the above-mentioned subsidiaries and/or divisions) nor will it be furnished to any governmental agency or other person, subject to specific legislative requirements, without the prior written consent of your firm.

Your prompt assistance in this matter will be appreciated. If you are unable to confirm or provide the information requested above, please advise us and our auditor the reasons for any limitation or impediment to fulfilling this request.

Please forward a signed copy of your reply directly to our auditors, (name) at (address), by (date).

Yours faithfully,

(Signature and Title of client)

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| Tables of Differences — ASA 508 (Revised and Redrafted) and Extant ASA 508 |
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Underlying Standard

ISA 501 (Redrafted) is used as the underlying Auditing Standard for the purpose of re-drafting this proposed Auditing Standard. The underlying Auditing Standard will be amended for the following matters:

- Australian Laws and Regulations (including the *Corporations Act 2001*);
- Changes considered necessary because this Auditing Standard is a legislative instrument; and
- Changes considered necessary in the public interest.

Summary of Main Differences — ASA 508 (Revised and Redrafted) and Extant Standard ASA 508

The table below details the main differences (excluding editorial amendments) between this proposed Auditing Standard and extant ASA 508.

Requirements in ASA (Revised and Redrafted) not in Extant ASA

| Item # | ASA (Revised and Redrafted) Para. # | ASA (Revised and Redrafted) Requirements | Commentary |
|------------------------------|-------------------------------------|---|--|
| Objective | | | |
| 1 | 3 | The objective of the auditor is to obtain sufficient appropriate audit evidence regarding the completeness of litigation and claims involving the entity. | New Objective. |
| Litigation and Claims | | | |
| 2 | 4 | The auditor shall design and perform audit procedures in order to identify litigation and claims involving the entity which may give rise to a risk of material misstatement, including: (Ref: Para. A17-A19) (a) Enquiry of management and, where applicable, others within the entity, including in-house legal counsel; | Elevation of extant ASA Explanatory Guidance [Extant ASA 508 <i>Enquiry Regarding Litigation and Claims</i> para 8 and para 9—equivalent Explanatory Guidance]. |

| Item # | ASA (Revised and Redrafted) Para. # | ASA (Revised and Redrafted) Requirements | Commentary |
|--------|-------------------------------------|--|--|
| | | (b) Reviewing minutes of meetings of those charged with governance and correspondence between the entity and its external legal counsel; and (c) Reviewing legal expense accounts. (Ref: Para. A20) | |
| 3 | 5 | If the auditor assesses a risk of material misstatement regarding litigation or claims that have been identified, or when audit procedures performed indicate that other material litigation or claims may exist, the auditor shall endeavour to, in addition to the procedures required by other ASAs, seek direct communication with the entity’s external legal counsel. The auditor shall do so through a letter of enquiry, prepared by management and sent by the auditor, requesting the entity’s external legal counsel to communicate directly with the auditor. If law, regulation or the respective legal professional body prohibits the entity’s external legal counsel from communicating directly with the auditor, the auditor shall perform alternative audit procedures. (Ref: Para. A21-A25) | Shaded text has no extant ASA equivalent. Introduced by IAASB to address issues faced by auditors in some jurisdictions where there may be a blanket prohibition on legal counsels on responding to enquiries letter from auditors. Unshaded text – extant ASA 508 para 11 and para 13 – equivalent Requirements. |
| 4 | 6 | If: (a) management refuses to give the auditor permission to communicate or meet with the entity’s external legal counsel, or the entity’s external legal counsel refuses to respond appropriately to the letter of enquiry, or is prohibited from responding; and (b) the auditor is unable to obtain sufficient appropriate audit evidence by performing alternative audit procedures, the auditor shall modify the opinion in the auditor’s report in accordance with ASA 705 (Revised and Redrafted). | Elevation of extant ASA Explanatory Guidance [Extant ASA 508 para 31-32 —equivalent Explanatory Guidance]. |

| Item # | ASA (Revised and Redrafted) Para. # | ASA (Revised and Redrafted) Requirements | Commentary |
|--------------------------------|-------------------------------------|--|--|
| <i>Written Representations</i> | | | |
| 5 | 7 | The auditor shall request management and, where appropriate, those charged with governance to provide written representations that all known actual or possible litigation and claims whose effects should be considered when preparing the financial report have been disclosed to the auditor and appropriately accounted for and disclosed in accordance with the applicable financial reporting framework. | Equivalent Requirement in extant ASA 580 <i>Management Representations</i> . [Extant ASA 580 para 9 and guidance in Appendix 1] |

Requirements in Extant ASA not in ASA (Revised and Redrafted)

| Item # | Extant ASA Para. # | Extant ASA Requirement | Commentary |
|--|--------------------|--|---|
| Not Retained in ASA [Revised & Redrafted] | | | |
| Introduction | | | |
| 1 | 5 | The auditor shall obtain sufficient appropriate audit evidence regarding: <ul style="list-style-type: none"> (a) Whether all material litigation and claims have been identified; (b) The probability of any material revenue or expense arising from such matters and the estimated amount thereof; and (c) The adequacy of the accounting treatment of such matters including their disclosure in the financial report. | Shaded text not carried forward in ASA 508 (Revised and Redrafted). Covered by the Requirements contained in other ASAs (Revised and Redrafted): <ul style="list-style-type: none"> • ASA 200 (Revised and Redrafted) <i>Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with International Standards on Auditing</i> general requirement to obtain sufficient appropriate audit evidence; and • ASA 540 (Revised and Redrafted) <i>Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures</i> para 18-20 requirements regarding the reasonableness and disclosure of accounting estimates |